On May 6, 1999, Shannon complained to Knox about a co-worker[4] claiming Shannon was a "former pimp," a comment referenced in his Complaint, supra. [Dkt. 41, p.2]. Shannon did not file an EEEOC claim regarding this incident. [Dkt. 41, p.2].

On November 8, 1999, Knox promoted Shannon to Acting Unit Supervisor, to serve in her place because of Knox's own recent promotion. [Dkt. 41, p.2]. In July 2000, Shannon became Unit Supervisor based upon Knox's recommendation. [Dkt. 41, p.2]. DES requires a six-month probationary period upon promotion to Unit Supervisor. [Dkt. 41, p.2-3].

On January 4, 2001,[5] Knox met with Shannon pursuant to complaints that Shannon had mistreated his employees. [Dkt. 41, p.3]. Knox recommended that Shannon's probationary period be extended for ninety (90)

days so that an investigation could be conducted. [Dkt. 41, p.3]. Shannon did not file an EEOC claim regarding this incident. [Dkt. 41, p.3].

On April 6, 2001, while the investigation was still being conducted, Shannon applied for a position in the Juvenile Corrections Unit of DES. [Dkt. 41, p.3]. Shannon's transfer was approved on April 7, 2001. [Dkt. 41, p.3]. Shannon reported to Ilene Herberg, Unit Supervisor, who subsequently gave Shannon a satisfactory performance review. [Dkt. 41, p.3].

The investigation disclosed that Shannon had been charged with "Intent to Distribute Controlled Substance" on December 31, 1994 in Missouri. [Dkt. 41, p.3]. On

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4Shannon maintains that the co-worker is Knox and contests DES's "false inference that Plaintiff was not aware of the person who [made the comment]." [Dkt. 52, Par. 3].

5Shannon alleges that the meeting occurred on January 11, 2001, one day after Shannon's official probation end date. [Dkt. 52, Par. 5].

December 5, 1995, Shannon entered a plea of guilty of the charge of "traffic in Drugs Second Degree." [Dkt. 41, p.3]. The Court suspended Shannon's incarceration and sentenced him to five (5) years probation.[6] [Dkt. 41, p.3]. The police report stated that Shannon had rented a car in Phoenix, Arizona, for a one-way trip to Cincinnati, Ohio. During the trip, Shannon was stopped by law enforcement in St. Louis County, Missouri, who discovered two hundred pounds (200 lbs.) of marijuana in the trunk of Shannon's rental car. [Dkt. 41, p.3-4].

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[6] As such, the conviction does not appear on Shannon's record. [Dkt. 40, p.9]. Shannon's former attorney in Missouri, in an Affidavit, explains:

My name is Murray Stone, attorney for Derman Shannon. Mr. Shannon was arrested in 1994 in St. Louis County, Missouri. The arrest resulted in a Suspended Imposition of Sentence (SIS) and probation. Mr. Shannon successfully completed probation. I explained to Mr. Shannon when this incident arose in 1994 that under Missouri law when a person successfully complete probation after an SIS, such person has no record of a conviction. Therefore, Mr. Shannon's arrest record will show no conviction stemming from this arrest. [Dkt. 51, Exh. A].

On September 5, 2002, as a result of the investigation by DES, Plaintiff was demoted for misrepresenting the nature of this criminal offense. [Dkt. 41, p.4]. Plaintiff's applications for employment allegedly had suggested to DES that a small amount of marijuana was involve for personal use, as opposed to two hundred pounds (200 lbs.), which infers an intent to distribute or sell. [Dkt. 41, p.4][7]. On September 5, 2002, DES issued Shannon a letter, which explained the charges of misconduct:

> The specific charges and explanations are:
>
> You falsified your employment application dated April 15, 1998 and therefore, misled the Department in regards to your felony conviction of 1994/1995. You failed to fully disclose the specific charge (Traffic in Drug 2nd Degree) on your employment application and falsely stated that the conviction was being overturned when in reality, you had never applied to have the conviction overturned. The deliberate misrepresentation, concealment, and inaccuracy of the true facts relating to the felony conviction constitutes 'Fraud in Securing Appointment', which is a violation of Arizona Department of Administration Personnel Rule R2-5-501, Standards of Conduct.
>
> [Dkt. 41, Exh.14].

On September 11, 2002, Shannon filed a Charge with the EEOC alleging that he was demoted because of racial discrimination. [Dkt. 41, p.4-5]. Plaintiff met with Knox and Fred "Skip" Bingham ("Bingham"), DES Rehabilitation Program Administrator, and allegedly decided to accept a voluntary one grade decrease without pay reduction and transfer to the adult unit at DES. [Dkt. 41, p.5].

On November 1, 2002, Plaintiff filed another Charge with the EEOC alleging that DES's "stated reason fro demoting me and requiring me to relocate is a pretext for discrimination." [Dkt. 41, p.5; Dkt. 41, Exh. 17].

Shannon filed a Complaint in federal court on December 23, 2002. DES argues that two (2) of Shannon's three (3) alleged discriminatory incidents are time-barred pursuant to the statute of limitations provided by 42 U.S.C.

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7 Shannon maintains he did not know that marijuana was in the car. [Dkt. 52, Par 1; Dkt. 46, p.2].

Sec. 2000e-5(e)(1). [Dkt. 40, p.3, 5-6]. The first incident, in which a co-worker called Shannon a "former pimp," occurred in April 1999, and no EEOC Charge has been filed. [Dkt. 40, p. 5]. The second incident, in which Knox extended Shannon's probationary period for ninety (90) days, occurred in January 2001, and no EEOC Charge has been filed. [Dkt. 40, p. 5-6]. As such, DES argues that the time to file a Complaint regarding those two incidents has expired. The third incident, which Shannon referenced in his EEOC Charge, involved Shannon's demotion, which DES argues was voluntary, legitimate, non-discriminatory act of discipline [Dkt. 40, p.6-10; Dkt. 46, p.1].

C. **Plaintiff's Response to Defendant's Motion for Summary Judgment** [Dkt. 51].

Shannon filed a Response t Defendant's Motion for Summary Judgment, in which he alleges that he "never deliberately misrepresented any fact [about his criminal

record] as alleged by Defendant in any application that Plaintiff submitted . . . DES. . ." [Dkt. 52, Par. 2]. Shannon contends that "[i]t's simple, Defendant demoted plaintiff because of Plaintiff's knowledge of more than a decade of agency malfeasance committed by Skip Bingham and Barbara Knox during their employment with RSA; Plaintiff reported to Knox evidence of RSA under Knox and Bingham's leadership misrepresentation of Dollars (tens of thousands of Taxpayer's dollars) also. [Dkt. 52, Par. 4]. Further, Shannon asserts that DES's "ruse of pretext demotion was for retaliation reasons as well as a desperate attempt to cover-up more than a decade of violations for inefficiency, ineffectiveness, wanton and willful negligence and many other State of Arizona DES Policies that RSA promised to comply with." [Dkt. 52, Par. 4].

Shannon maintains that "it is abundantly clear that there is no conviction" for "Traffic in Drugs Second Degree"

because no sentence was imposed. [Dkt. 52, Par 7]. As such, the demotion based upon that conviction is a "pretext to racial discrimination." [Dkt. 52, Par 7].

Further, Shannon asserts that Bingham lied in his Affidavit.[8] [Dkt. 52, Par 8]. Shannon also denies that he accepted a voluntary one grade demotion as alleged by DES. [Dkt. 52, Par. 10]. Rather, Shannon claims he "was forced out of the Grade 19 position . . . by being conspired against by DES management as a precursor to violating Plaintiff's Civil Rights. . ." [Dkt. 52, Par. 10].

Shannon concludes that "Defendant lied on every piece of document [sic] that it submitted (filed) in the United States District Court, as a clear cover-up for subjecting Plaintiff (and the majority of African-American males) to hostile work environment, disparate impact, malfeasance, neglect, retaliation, and conspiracy." [Dkt. 52, "Conclusion"].

D. Defendant's Reply to its Motion for Summary Judgment [Dkt. 46]

[9] In its Reply to its Motion for Summary Judgment [Dkt. 46], DES argues that Shannon was hired despite his criminal record because "[t]he implication was clear that the amount of marijuana was small enough to be hidden in a car, and Plaintiff did not know about it [plus] Plaintiff had a history of work as a middle school teacher, and had a good education." [Dkt. 46, p.2]. Therefore, the discovery that two-hundred pounds (200 lbs.) of marijuana was involved "raised concerns about Plaintiff's honesty in his applications. . ." [Dkt. 46, p. 2].

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[8] Shannon does not provide details as to which parts of the Affidavit constitute alleged lies.

[9] Shannon filed his Response after DES filed their Reply; however, it appears Shannon timely served DES with his Response without filing same with the Court. As such, the docked numbers appear out of order.

DES cites to conflicting stories told by Shannon regarding how and when the marijuana may gave been placed in the trunk. [Dkt. 46, p.2-3].

DES contends that two of the incidents Shannon complains of are time-barred pursuant to the statute of limitations provided in 42 U.S.C. Sec. 2000e-5(e)(1), and that the third incident was a legitimate, non-discriminatory act of discipline [Dkt 46, p.4-7]. To support its arguments, and pursuant to the Court's order at the June 21, 2004 hearing, DES submitted to the Court by fax an Interoffice Memo written by Shannon. The memo read, in its entirety:

> For personal reasons, this is to request a Voluntary Grade Decrease from a Rehabilitation Services Program Representative, grade 19, ADED^^^AAE, to accept a position as a Rehabilitation Services Specialist III, grade 18, ADEB890AAN, effective October 21, 2002.
>
> I understand that I will retain my permanent status, salary and this Voluntary Grade Decrease will result in my acceptance of a Rehabilitation Services Specialist III, grade 18. I fully understand that if I promote within on year to the class held prior to this voluntary grade decrease request, my salary shall be set the same as in accordance with

the Department of Administration (DOA) Personnel Rule R2-5-303.Q.3.

However, if I promote to a different job classification and title other than that held prior to the voluntary Grade Decrease, my salary shall be set as in accordance with Department of Administration Personnel Rule R2-5-303.Q.4.

Furthermore, I am aware that I have no right to grieve this Voluntary Grade Decrease, which I have knowingly requested.
[Fax of June 21, 2004].

The Interoffice Memo is dated October 17, 2002, and signed by Shannon. Further, the next day, October 18, 2002, Shannon wrote Bingham a letter:

Skip Bingham,

I am on sick leave today. After consultation and thought, yesterday's offer of accepting job [sic] with pay of $30K or accepting he same job with same grade 18 status with pay of $33K (present salary) has been decided [sic]:

Grade 18 w/my present salary is my choice.
[Fax of June 21, 2004].

The letter is signed by Shannon.

II. Standard of Review

Summary judgment is proper "only if no genuine issues of material fact remain for trial and the moving party is

entitled to judgment as a matter of law." Block v. city of Los Angeles, 253 F. 3d 410, 416 (9th Cir. 2001). Moreover, the Court must view evidence in a light most favorable to the nonmoving party. Id.

III. Discussion

A. Count One (Co-worker's Comment) and Count Two (Extension of Probation)

1. Title VII

DES contends, in its Reply, that its Motion for Summary Judgment "is based on the fact that two of the three alleged discriminatory incidents raised by Shannon in his Complaint are barred by the statute of limitations. . ." [Dkt. 46, p.1].

Title VII provides a statute of limitation on employment discrimination claims:

A charge under this section shall be filed within on hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.
42 U.S.C. Sec 2000e-5(e)(1).

The Supreme Court has held that "[a] discrete retaliatory or discriminatory act 'occurred' on the day that it 'happened.' A party, therefore, must file a charge within either 180 or 300 days of the date of the act or lose the ability to recover for it." Nat'l Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 110, 122 S.Ct. 2061, 2070 (2002); see 42 U.S.C. Sec

2000e-5(e)(1).

Discrete acts such as termination, failure to promote, denial of transfer, or refusal to hire are easy to identify. Each incident of discrimination and each retaliatory adverse employment decision constitutes a separate actionable 'unlawful employment practice.' [Plaintiff] can only file a charge to cover discrete acts that 'occurred' within the appropriate time period.
Id. At 114, 2074.

On the other hand,

[h]ostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. The 'unlawful employment practice' therefore cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own.
Id. At 115, 2073

It is clear from Morgan that a termination, failure to promote, denial of transfer, and refusal to hire are discrete, separate, actionable unlawful employment practices. Thus, allegations of such employment practices, which occurred more than 180 days prior to December 23, 2002, are now time-barred in this action if the allegations were not raised in either of the EEOC Charges filed by Shannon.

2. EEOC Charges

Shannon filed two EEOC Charges. The fires Charge was on September 11, 2002, and reads:

> PERSONAL HARM: On September 5, 2002 I was notified that a demotion was being considered for me in my position as Vocational Rehabilitation Service Program Representative. I have been employed with the State since June 1998.
>
> RESPONDENT'S REASON FOR ADVERSE ACTION: Acting Assistant Director Thomas Colombo told me the demotion was being considered because of charges surrounding my April 15, 1998 application.
>
> DISCRIMINATION STATEMENT: I believe I have been discriminated against because of my race (Black) in violation of Title VII of the Civil Rights Act of 1964, as amended.

> The department alleges that I falsified my employment applications by misleading them with regard to a felony conviction of 1994/1995. They say I failed to fully disclose the specific charge related to a felony, and that I falsely said a conviction had been overturned when it had not. I did not mislead [sic] the department on my application, because I noted my felonies and I fully explained them. The department had my applications when I was hired and when I applied for other jobs; they have never questioned me about it. I believe the department is setting me for discipline because of my race.

[Dkt. 41, Exh. 15].

On September 23, 2002, the EEOC issued a Dismissal

and Notice of Rights. The EEOC found that "[b]ased upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised this charge." [Fax of June 21, 2004].

Shannon filed his second Charge of discrimination with the EEOC on November 1, 2002, which reads:

> 1 In September of 2002 I filed a charge of discrimination with the EEOC (350-A-203099). On October 17, 2002 I was demoted in grade and moved to another location. This is the second time I have been required to relocate.
>
> 2 I have reason to believe that the employer's stated reason for demoting me and requiring me to relocate is pretext for discrimination.
>
> 3 I believe that I have been discriminated against because of my race, Black, and gender, male, and retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

[Dkt. 41, Exh. 17].

On November 21, 2002, the EEOC issued a Dismissal

and Notice of Rights, with identical findings to that of Shannon's first Charge filed on September 11, 2002.

The first incident (count One), in which a co-worker called Shannon a "former pimp," is a separate, actionable unlawful employment practice. See id. At 114, 2074. The comment occurred on a single day in April 1999. Shannon did not mention the comment in either of the EEOC Charges that he filed.

The second incident (Count Two), in which Knox extended Shannon's probationary period for ninety (90) days, in arguably similar to a failure to promote.

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The extension of Shannon's probationary period does not involve "repeated conduct' so as to amount to a "hostile environment." See id. At 115, 2073. Shannon's probationary extension occurred in January 2001, and did not repeatedly occur thereafter. Shannon did not mention

Knox's recommendation that Shannon's probationary period be extended in either of the EEOC Charges he filed.

Pursuant to the statute of limitations, Counts One and Two of Plaintiff's Complaint are time-barred as having not been raised in either EEOC Charge. Therefore, summary judgment will be granted in favor of DES with respect to these two counts.

B. Count Three (Demotion)

The parties dispute material facts regarding the third

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10 The Court jus determine whether each of Shannon's claims stem from a separate, discrete action or an on-going hostile work environment in order to apply the appropriate statute of limitations. The Court likens Shannon's extended probationary period to a failure to promote, which was determined to be a separate, discrete action in Morgan, for the sole purpose of determining the allotted time in which Shannon had to file a claim. If an employer's failure to promote, which arguably can have far-reaching and long-lasting consequences to the employee, is considered a separate, discrete act, then Shannon's extended probationary period, arguably of less consequence, is a separate, discrete act.

discriminatory act of discipline. [Dkt. 40, p.6-10; Dkt. 46 p.1]. Shannon asserts that "Defendant demoted plaintiff because of Plaintiff's knowledge of more that a decade of agency malfeasance committed by Skip Bingham and Barbara Knox during their employment with RSA." [Dkt. 52 Par. 4]. Further, Shannon contends that he "was forced out of the Grade 19 position. . . by being conspired against by DES management as a precursor to violation Plaintiff's civil Rights. . ." [Dkt. 52, Par. 10] (emphasis added).

There is a high standard for the granting of summary judgment in employment discrimination cases.'" Nidds v. Schindler Elevator Corp., 113 F.3d 912, 921, (9th Cir. 1996)(quoting Schnidrig v. Colombia Mach., Inc., 80 F. 3d 1406, 1410 (9th Cir. 1996)). The Ninth Circuit has held that "[a]s a general matter, the plaintiff in an employment discrimination action need produce very little evidence in

order to overcome an employer's motion for summary judgment.. This is because 'the ultimate question is one that can only be resolved through a searching inquiry – one that is most appropriately conducted by a fact finder upon a full record.'" Chuang v. Univ. of Calif. Davis, Bd. Of Trustees, 225 F.3d 1115, 1124 (9th Cir. 2000). The Interoffice Memo provided to the Court on June 21, 2004 resolves the dispute of fact regarding whether the demotion was voluntary or involuntary. Shannon averred that for personal reasons, [I] request a Voluntary Grade Decrease" and that " I am aware

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A letter dated October 17, 2002, from Thomas Colombo Acting Assistant Director-division of Employment and Rehabilitation Services, to Shannon belies DES's claim that the demotion was an "act of discipline." The letter closes with the following sentence: "Since this action is voluntary and because you have an acceptable record of State Service, this letter will be placed in your official personnel file to show that this was the result of your voluntary request and *not because of disciplinary action.*" [Dkt. 51, Exh. DF 383] (emphasis added). The Court finds the demotion to be voluntary pursuant to Shannon's interoffice Memo of October 17, 2002, and his handwritten letter of October 18, 2002.

that I have no right to grieve this Voluntary Grade Decrease, which I have knowingly requested." As such, there is no disputed issue of material fact for a jury to resolve regarding the impetus of Shannon's demotion. Shannon has provided no evidence[12] to suggest that he did not voluntarily accept the demotion or that the demotion was involuntary or based on race, gender, or retaliation.

IV. Conclusion

Counts One and Two are time-barred pursuant to 42 U.S.C. Sec. 2000e-5(e) (1) and Nat'l Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 110, 122 S.Ct. 2061, 2070 (2002). Therefore, Counts One and Two are dismissed.

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[12] The Court notes Shannon's diligence over the past two years in litigating this matter in pro per. However, while Shannon included hundreds of pages of information with his Response to DES's Motion for Summary Judgment, he did not produce any evidence of discrimination or retaliation to counter his written, voluntary request for a one-grade demotion.

Count Three is dismissed because Shannon failed to produce any evidence of retaliation or discrimination by DES to counter the evidence of his written, voluntary request for a one grade demotion.

Accordingly,

IT IS ORDERED that Defendant's Motion for Summary Judgment is **GRANTED**. [Dkt. 40-1].

IT IS ORDERED that Plaintiff's Complaint is **DISMISSED**.

IT IS FURTHER ORDERED that Plaintiff's Motion in Limine is **DENIED** as moot. [Dkt. 84].

DATED this 29 day of June, 2004.

"s/ Earl H. Carroll"
Earl H. Carroll
United States District Judge

1d **FILED** JUN 30 2004

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DERMAN SHANNON, Plaintiff	**JUDGMENT IN A CI VIL**
v.	CASE
ARIZONA DEPARTMENT OF ECONOMIC SECURITY VOCATIONAL REHABILITATION SERVICES ADMINISTRATION, Defendant.	CIV 02-2585-PHX-EHC

__ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

__ IT IS ORDERED AND ADJUDGED granting the Defendant's Motion for Summary Judgment. Plaintiff shall take nothing; this action and complaint are hereby dismissed.

June 30th 2004
Date

RICHARD H. WEARE
District Court Executive/Clerk

"s/Kathleen M. Hicha"
(By) Deputy Clerk

Cc: (all counsel)

1e **FILED** APR 09 2003

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

DERMAN SHANNON	)
	) CASE NO. CIVO2-2585
Plaintiff,	) PHX EHC
	)
Vs.	)
	) **JOINT PROPOSED**
	)**CASE MANAGEMENT**
	) **PLAN**
ARIZONA DEPARTMENT OF	)
ECONOMIC SECURITY	)
VOCATIONAL	)
REHABILITATION	)
SERVICES ADMINISTRATION,)	
	)
Defendant.	)
_____	)

* * * (d) [p. 5] **The Legal Basis of the Defense:**

Plaintiff's demotion was based on a **valid** and **non-discriminatory reason**; Plaintiff's conviction for drug trafficking disqualified him from having direct contact with juveniles under the jurisdiction of the Department of Juvenile Corrections and the Maricopa County Juvenile Probation Department. *Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000).* * * *

By: "s/Thomas A Mcguire
Assistant Attorney General
Attorneys for Defendant